IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :02.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.Nos.1379,1384,1385 and 1386 of 2004

A.B.M.Raja Sah ..Petitioner in all the revisions/ accused

vs.

B.M.S.Srinivasa Sah ..Respondent in all the revisions/ complainant

These Revisions are filed against the Judgment dated 20.5.2004 passed by the Additional District and Sessions Judge,Fast Track Court No.2,Kancheepuram in C.A.Nos.26 of 2003,27 of 2003, 24 of 2003 and 25 of 2003 respectively confirming the Judgment dated 5.3.2003 passed by the Judicial Magistrate No.1, Kancheepuram in C.C.Nos.276 of 2001, 277 of 2003,274 of 2001 and 275 of 2001 respectively.

For Petitioner : Mr.D.N.Durgasha

For Respondent : Mr.P.N.Prakash

C O M M O N O R D E R

Crl.R.C.No.1379 of 2004 arises out of a finding in C.A.No. 26 of 2003 on the file of the Additional District and Sessions Judge (Fast Track Court No.2) Kancheepuram which emanates from a Judgement in C.C.No.276 of 2001 on the file of the learned Judicial Magistrate No.1, Kancheepuram.

Crl.R.C.No. 1384 of 2004 arises out of a Judgment in C.A.No. 27 of 2003 on the file of the Additional District and Sessions Judge (Fast Track Court No.2) Kancheepuram which in turn arises out of a Judgement in C.C.No.277 of 2001 on the file of the learned Judicial Magistrate No.1, Kancheepuram.

Crl.R.C.No. 1385 of 2004 arises out of a Judgment in C.A.No. 24 of 2003 on the file of the Additional District and Sessions Judge (Fast Track Court No.2) Kancheepuram which in turn

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arises out of a Judgement in C.C.No.274 of 2001 on the file of the learned Judicial Magistrate No.1, Kancheepuram.

Crl.R.C.No. 1386 of 2004 arises out of a Judgment in C.A.No. 25 of 2003 on the file of the Additional District and Sessions Judge (Fast Track Court No.2) Kancheepuram which in turn arises out of a Judgement in C.C.No.275 of 2001 on the file of the learned Judicial Magistrate No.1, Kancheepuram.

2. In all the revisions both the complainant and the accusdd are one and the same. The complainant in all the four cases had preferred a private complaint under Section 200 of Cr.P.C. against the accused for an offence under Section138 of Negotiable Instrument Act (herein after referred to as " the Act").

2a. In C.C .No.276 of 2001, the accused had borrowed a sum of Rs.3,01,850/- for the purpose of improving his business and in order to discharge the said debt amount, the accused had issued four cheques Exs P1 to P4 in favour of the complainant on 28.2.2001. When the cheques were presented in the bank on 31.5.2001, all the cheques were returned with an endorsement" payment stopped by the drawer". The returned memo are Exs P5 to P8. The complainant had issued a notice to the accused under the original of Ex P9 on 6.6.2001 which was received by the accused and had sent a reply notice Ex P10 on 15.6.2001. Even after the receipt of the notice, the accused had neither come forward to discharge the said loan amount, nor raised any valid defence in his reply notice. The complainant had preferred a private complaint which had taken cognizance
by the learned Judicial Magistrate No.1, Kancheepuram, and after the accused appeared on summons, copies under Section 207 of Cr.P.C were furnished and when the offence was explained to the accused, the accused pleaded not guilty.

3. On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P12 were marked.

4. P.W.1 is the complainant who has narrated what he had stated in the complaint.P.W.2 is the Branch Manager Vysya Bank, Kancheepuram wherein the accused is having his current account in the name of "Shanthi saree Silks "and "Sridhar Designs". According to P.W.2, four cheques viz., Exs P1 to P4 for Rs.1,00,000/- Rs.1,25,000/-, Rs.32,000/- and Rs 44,850/- respectively were forwarded to Vysya Bank, Kancheepuram Branch for collection on 31.5.2001 through Punjab National Bank, Kancheepuram where the complainant is having his account. But the cheques were dishonoured on the ground that "Payment stopped by the drawer".

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4a. P.W.3 is the Bank Manager of Punjab National Bank, Kancheepuram wherein the complainant is having his account through him, Ex P11 cheques return register was marked to show that the above said Exs P1 to P4 impugned cheques were presented by the complainant in Punjab National Bank where returned from Vysya Bank, Kancheeputam on the ground that the drawer of those cheques has advised the bank "to stop payment". EX P12 is the copy of the statement of account relating to the complainant.

5. When the incriminating circumstances were put to the accused, he denied his complicity with the crime. The accused has examined himself as D.W.1 and Exs D1 to D3 were exhibited.

6. After going through the evidence both oral and documentary, the learned trial Judge has found the accused guilty under Section 138 of the Negotiable Instruments Act 1881(four counts) and sentenced the accused to pay a fine of Rs.100/- in each counts and also directed the accused to pay a compensation of Rs.3,01,850/- under Section 357(3) of Cr.P.C. with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal before the Sessions Judge in C.A.No.26 of 2003 on the file of Additional District and Sessions Judge, Fast Track Court, No.2, Kancheepuram. The learned first appellate Court , after giving due deliberation to the submissions made by the counsel appearing for both sides, relying on a ratio decidenti in Goa Plast (P) Ltd.,-v-Chico Ursula(2004(1) T.N.L.R. 102 : 2004(2) SCC,235) and also another decision of the Apex Court M.M.T.C.Ltd-vs- Medchi Chemicals and Pharma (P)Ltd.,(2002(1) SCC 234) has ultimately concurred with the findings of the trial Judge, thereby confirming the conviction of the learned trial Judge, had modified the sentence by setting aside the fine of Rs.100/- imposed on the accused on each counts and confirmed the compensation awarded by the learned trial Judge which necessitated the accused to approach this Court by way of Crl.R.C.No.1379 of 2004.

7.C.C.No.277 of 2001: Before the trial Court, the complainant in his private complaint would state that on 28.2.2001 the accused had issued four cheques in order to discharge a sum of Rs.3,09,670/- which was borrowed by him on various occasions . When those cheques were presented by the complainant in Punjab National Bank,Kancheepuram on 31.5.2001, all the cheques were dishonoured with an endorsement"Payment stopped by the drawer".Exs P1 to P4 are the impugned cheques. The complainant had sent a notice of demand under the original of Ex P7 on 6.6.2001. The same was received by the accused and Ex P18 is the reply notice. After taking cognizance of the complaint, the learned trial Judge by the learned Judicial Magistrate No.1, Kancheepuram, and after the accused appeared on summons, copies under Section 207 of Cr.P.C

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were furnished and when the offence was explained to the accused, the accused pleaded not guilty.

8.On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P12 were marked.

9.P.W.1 is the complainant who would narrate what he had stated in the complaint.

9a. P.W.2 is the Branch Manager of Vysya Bank, Kancheepuram wherein the accused is having his account in the name of "Shanthi saree Silks" and" Sridhar Designs".Ex P1 cheque is for Rs.1,00,000/-. Ex P2 cheque is for Rs.1,55,000/-. Ex P3 cheque is for Rs.26,000/- and Ex P4 is the cheque for Rs.28,670/-. According to him, Exs P1 to P4 impugned cheques were forwarded by the Punjab National Bank , Kancheepuram for collection, but they were dishonoured on the ground that" payment stopped by the drawer". Exs P9 to P16 are the returned memo sent along with Exs P1 to P4 impugned cheques.

9b. P.W.3 is the Manager of the Punjab National Bank, Kancheepuram wherein the complainant is having his account. He would also corroborate the evidence of P.W.2 to the fact that Ex P1 to P4 were presented by the complainant for collection and they were sent to Vysya Bank, Kancheepuram Branch, for collection, but the same were returned by the Bank with an endorsement"Payment stopped by the drawer". Ex P19 is the register showing the entries for the return of the cheques.

10. When the incriminating circumstances were put to the accused, he denied his complicity with the crime. The accused has examined himself as D.W.1 and Exs D1 to D3 were exhibited.

11. After going through the evidence both oral and documentary, the learned trial Judge has found the accused guilty under Section 138 of the Negotiable Instruments Act 1881(four counts) and sentenced the accused to pay a fine of Rs.100/-for each counts and also directed the accused to pay a compensation of Rs.3,09,670/- under Section 357(3) of Cr.P.C. with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal before the Sessions Judge in C.A.No.27 of 2003 on the file of Additional District and Sessions Judge, Fast Track Court, No.2, Kancheepuram. The learned first appellate Court , after analysing the evidence both oral and documentary and also submissions of the learned counsels for both sides, and after going through the findings of the learned trial Judge, had modified the sentence setting aside the fine of Rs.100/- imposed on the accused on each counts and confirmed the compensation awarded by the learned trial Judge which necessitated

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the accused to approach this Court by way of Crl.R.C.No.1384 of 2004.

12. C.C.No.274 of 2001: According to the complainant in the complaint preferred by him under Section 200 of Cr.P.C. against the accused for an offence under Section 138 of Negotiable Instruments Act 1881 , the accused in order to discharge the subsisting debt of Rs.6,51,820/- issued eight cheques in favour of the complainant on 28.2.2001, when the cheques were presented for realisation in Punjab National Bank, Kancheepuram Branch, on 31.5.2001 , they were dishonoured on the ground that "payment stopped by the drawer".EXs P1 to P8 are the impugned cheques under the original of ExP17 dated 6.6.2001. The complainant has issued a notice of demand as contemplated under Section 138(b) of the Act which was received by the accused and responded with a reply under Ex P18 on 15.6.2001. Since the accused had failed to repay the debt amount, inspite of notice, the complainant had preferred a private complaint. After taking cognizance of the complaint, the learned trial Judge by the learned Judicial Magistrate No.1, Kancheepuram, and after the accused appeared on summons, copies under Section 207 of Cr.P.C were furnished and when the offence was explained to the accused, the accused pleaded not guilty.

13.On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P20 were marked.

14.P.W.1 is the complainant who would narrate what he had stated in the complaint.

15. P.W.2 is the Branch Manager of Vysya Bank, Kancheepuram wherein the accused is having his account in the name of "Shanthi saree Silks" and" Sridhar Designs".Ex P1 cheque is for Rs.1,00,000/-. Ex P2 cheque is for Rs.1,00,000/-. Ex P3 cheque is for Rs.1,00,000/-, Ex P4 cheque is for Rs.74,000/-, Ex P5 cheque is Rs.1,00,000/-, Ex P6 cheque is Rs.1,37,000/- Ex P7 cheque is Rs.13,100/- and Ex P8 cheque is Rs.27,720/-. P.W2 would depose that Exs P1 to P8 cheques were forwarded to Karur Vysya Bank,Kancheepuram for collection, but they were dishonoured on the ground that "payment stopped by the drawer. Ex P9 to Ex P16 are the returned memos sent along with Exs P1 to P8 cheques.

16. P.W.3 is the Manager of the Punjab National Bank, Kancheepuram who would admit that Exs P1 to P8 cheques were presented by the complainant with his bank and they were sent for collection to Karur Vysya Bank, Kancheepuram but were returned with an endorsement"Payment stopped by the drawer". Ex P19 is the register bearing the entries for the return of Exs P1 to P8 cheques.

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17. When the incriminating circumstances were put to the accused, he denied his complicity with the crime. The accused has examined himself as D.W.1 and Exs D1 to D3 were exhibited.

18. After going through the evidence both oral and documentary, the learned trial Judge has found the accused guilty under Section 138 of the Negotiable Instruments Act 1881(four counts) and sentenced the accused to pay a fine of Rs.100/- for each counts and also directed the accused to pay a compensation of Rs.6,51,820/- under Section 357(3) of Cr.P.C. with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal before the Sessions Judge in C.A.No.24 of 2003 on the file of Additional District and Sessions Judge, Fast Track Court, No.2, Kancheepuram. The learned first appellate Court , after weighing the evidence both oral and documentary and also submissions of the learned counsels for both sides, and after going through the findings of the learned trial Judge, had modified the sentence setting aside the fine of Rs.100/- imposed on the accused on each counts and confirmed the compensation awarded by the learned trial Judge which necessitated the accused to approach this Court by way of Crl.R.C.No.1385 of 2004.

19. C.C.No.275 of 2001: The complainant had filed a private complaint under Section 200 of Cr.P.C. alleging that the accused in order to discharge the subsisting liability had issued five cheques for a sum of Rs.3,49,920/- on 28.2.2001 in favour of the complainant. When those cheques were presented with the Punjab National Bank, Kancheepuram on 31.5.2001, all the cheques were dishonoured on the ground that "payment stopped by the drawer".EXs P1 to P5 are the impugned cheques. ExP1 cheque is for Rs.96,000/. Ex P2 cheque is for Rs.23,165/-. Ex P3 cheque is Rs.30,755/-.Ex P4 cheque is Rs.1,00,000 and Ex P5 cheque is Rs.1,00,000/-. The complainant has issued a notice to the accused under the original of Ex P11 which was responded with a reply notice under Ex P12 dated 15.6.2001. After taking cognizance of the complaint, the learned trial Judge by the learned Judicial Magistrate No.1, Kancheepuram, and after the accused appeared on summons, copies under Section 207 of Cr.P.C were furnished and when the offence was explained to the accused, the accused pleaded not guilty.

20.On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P14 were marked.

21.P.W.1 is the complainant who would narrate what he had stated in the complaint.

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22. P.W.2 is the Branch Manager of Vysya Bank, Kancheepuram who would depose that Exs P1 to P5 cheques were forwarded to his branch for collection on 31.5.2001, through Punjab National Bank, Kancheepuram. But the cheques were returned with an endorsement"payment stopped by the drawer". Exs P6 to P10 are the returned memos sent along with Exs P1 to P5 impugned cheques.

23. P.W.3 is the Manager of the Punjab National Bank, Kancheepuram wherein the complainant is having his account. He has produced Ex P13 register containing the entries for the return of Exs P1 to P5 impugned cheques.

24. When the incriminating circumstances were put to the accused, he denied his complicity with the crime. The accused has examined himself as D.W.1 and Exs D1 to D3 were exhibited.

25. After going through the evidence both oral and documentary, the learned trial Judge has found the accused guilty under Section 138 of the Negotiable Instruments Act 1881(four counts) and sentenced the accused to pay a fine of Rs.100/- under each counts and also directed the accused to pay a compensation of Rs.3,49,920/- under Section 357(3) of Cr.P.C. with default sentence. Aggrieved by the findings of the learned trial Judge, the accused has preferred an appeal before the Sessions Judge in C.A.No.25 of 2003 on the file of Additional District and Sessions Judge, Fast Track Court, No.2, Kancheepuram. The learned first appellate Court , after scanning the evidence both oral and documentary and also submissions of the learned counsels for both sides, and after going through the findings of the learned trial Judge, had modified the sentence setting aside the fine of Rs.100/- imposed on the accused on each counts and confirmed the compensation awarded by the learned trial Judge which necessitated the accused to approach this Court by way of Crl.R.C.No.1386 of 2004.

26. Now the point for determination in these revisions is whether the findings of the learned first appellate Judge in C.A.Nos.26,27,24, and 25 of 2003 respectively are liable to be set aside for the reasons stated in the memorandum of revisions viz., Crl.R.C.No.1379,1384,1385 and 1386 of 2004?

27. Heard Mr.D.N.Durgasha, learned counsel for the revision petitioner and Mr.P.N.Prakash , learned counsel appearing for the respondent and considered their rival submissions.

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28.The Point:

In the reply notice Ex D2 sent by the accused in C.C.No.274 of 2001 (and in all the cases) is that the complainant had deceived the accused and committed the offence of breach of trust in respect of 22 cheques entrusted by the complainant with the accused and that he had preferred a complaint against the claimant under Sections 406,420,384 r/w 506(ii) of IPC and in the said private complaint preferred by the accused against the claimant , the learned trial Judge had directed the police to investigate under Section 156 (3) of Cr.P.C..But it is admitted that so far no First Information report has been laid against the complainant under the above provision of law on the basis of the complaint preferred by the accused. So it is clear from the reply notice Ex D2(original) in all the above cases, that the impugned cheque in the above said four cases have been drawn only by the accused infavour of the claimant. There is absolutely no evidence on record to show that the above said impugned cheques were entrusted with the claimant but the same was forged by the claimant for the purpose of these cases. Once, the signature in the impugned cheques were admitted by the accused, then the presumption under Sections 138 and 139 of the Act will follow.

29. The learned first appellate Judge after following the ratio decidenti in Goa Plast (P) Ltd.,-v- Chicl Ursula D'Souza (2004)2 Supreme Court Cases 235) has rightly come to the conclusion that there cannot be a fine and compensation as rightly set aside the fine amount by the learned trial Judge while upholding the compensation. But while following the Honourable Apex Court's dictum in Goa Plast (P) Ltd.,-v- Chicl Ursula D'Souza(2004)2 Supreme Court Cases 235) , the first appellate Court has failed to follow the dictum in full letter and spirit, while awarding the compensation , the first appellate Judge has awarded only the cheque amount alone as compensation whereas in the above said dictum of the Honourable Apex Court twice the amount of cheque is to be awarded as a compensation. The relevant observation in the above said dictum runs as follows:

> . . . . .Thus it has to be presumed that a cheque is issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. This presumption coupled with the object of Chapter XVII of the Act which is to promote the efficacy of banking operation and to ensure credibility in business transactions through banks persuades us to take a view that by countermanding payment of post-dated cheque, a party should not be allowed to

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> get away from the penal provision of Section 138 of the Act. A contrary view would render Section 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong. If we hold otherwise, by giving instructions to banks to stop payment of a cheque after issuing the same against a debt or liability, a drawer will easily avoid penal consequences under Section 138. Once a cheque is issued by a drawer, a presumption under Section 139 must follow and merely because the drawer issued notice to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138 of the Act by the drawee or the holder of the cheque in due course. This was the view taken by this Court in Modi Cements Ltd.v.Kuchil Kumar Nandi(1998)3 SCC 249). On same facts is the decision of this Court in Ashok Yeshwant Badave.v.Surendra Madhavrao Nighojakar (2001) 3 SCC 726). The decision in Modi Case overruled an earlier decision of this Court in Electronics Trade and Technology Development Corpn Ltd., v. Indian Technologists & Engineers (Electronics)(P) Ltd., (1996) 2 SCC 739:1996 SCC(cri)454) which had taken a contrary view. We are in respectful agreement with the view taken in Modi case(1998)3 SCC 249). The said view is in consonance with the object of the legislation. On the faith of payment by way of a post-dated cheque, the payee alters his position by accepting the cheque. If stoppage of payment before the due date of the cheque is allowed to take the transaction out of the purview of Section 138 of the Act, it will shake the confidence which a cheque is otherwise intended to inspire regarding payment being available on the due date. . . . . .

The above said observation exactly will apply in all four corners of the present facts of the case. After holding that the accused is guilty under Section 138 of the Act while awarding the sentence, the Honourable Apex Court has given one month's time to the accused to pay a sum of Rs.80,000/-(twice the amount of cheque) as compensation with default sentence. I am of the view that the same yardstick is to be applied to the present facts of the case also.

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30. Following the principle enunciated in the above said dictum,I am of the view that instead of giving any sentence, the accused can be directed to pay twice the amount of the cheque in these cases also. The point is answered accordingly.

31. In the result, Crl.R.C.Nos.1379,1384,1385 and 1386 of 2004 are disposed of hereunder. The findings of the first appellate Court in C.A.Nos.26,27,24 and 25/2003 respectively on the file of the Additional District Sessions Judge,fast Track Court, No.2, Kancheepuram are set aside. While convicting the accused under Section 138 of the Act, two months time from this date is given to the petitioner in Crl.R.C.No.1379/2004/accused herein to pay a sum of Rs.6,03,700/-(Rupees Six Lakhs three thousand and seven hundred) only(twice the amount of the cheque),in default to under go six months simple imprisonment. Two months time is given to the Petitioner in Crl.R.C.No.1384 of 2004 to pay a sum of Rs. 6,19,340/-(Rupees Six Lakhs ninteen thousand and three hundred and forty) only(Twice the amount of cheque) in default to undergo six months simple imprisonment .Two months time from this date is given to the petitioner in Crl.R.C.No.1385/2004/accused herein to pay a sum of Rs.13,03,640/-(Rupees Thirteen lakhs three thousand and six hundred and forty) only(twice the amount of the cheque),in default to under go six months simple imprisonment. Two months time from this date is given to the petitioner in Crl.R.C.No.1386/2004/accused herein to pay a sum of Rs.6,99,840/-(Rupees Six Lakhs ninety nine thousand eight hundred and forty) only(twice the amount of the cheque),in default to under go six months simple imprisonment.

sg

Sd/
Asst.Registrar

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Sub Asst.Registrar

To,

1.The Additional District Sessions Judge, Fast Track Court,No.2, Kancheepuram.

2. -do- through the Principal Sessions Judge,Chenglepet.

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3. The Judicial Magistrate No.1,Kancheepuram.

4.-do- the Chief Judicial Magistrate, Kancheepuram.

5. The Section Officer, VR Section, High Court, Madras.

+ 4 ccs to Mr. P. N. Prakash, Advocate, SR Nos.39408 to 39411

+ 4 ccs to Mr. D. N. Dhurgasha, Advocate, SR Nos.39238, 39239, 39240, 39241

Crl.R.C.Nos.1379,1384,
1385,1386/2004

SR/3.7.2007

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